

**NWX DOI BUR OF IND AFFAIRS**

**Moderator: Regina Gilbert**

**August 7, 2014**

**2:48 pm CT**

Coordinator: Welcome and thank you for standing by. At this time all participants are in a listen-only mode. After the presentation we will conduct a Q&A session. If you would like to ask a question you may press Star 1.

Today's conference is being recorded if you have any objections you may disconnect at this time. Your host for today's call is Mr. Larry Roberts, thank you. You may begin.

Larry Roberts: Good afternoon everyone this is Larry Roberts, Deputy Assistant Secretary for Indian Affairs. I want to thank everyone for joining the call this afternoon on the proposed rule with regard to our right of way regulations.

I believe that this is the third tribal consultation we're having on the proposed rule and so we're very interested in your input and feedback. We've had a lot of engagement in the early two consultations, which have been very helpful for the department in terms of thinking through how to move forward on the final rule.

And so with that I know - I also want to note that we've had some requests for an extension of time for the comment period on the proposed rule and I wanted to let the participants know that we will be extended the comment period and details of that should be circulated over the next day or two.

So I did want to let folks know that we will be extending the comment period and to basically be on the lookout for that. We will publicize that as broadly as possible.

I guess the other thing that I just wanted to say before we get started is what the team here has tried to do with the proposed rule is to in many respects model it after our leasing regulations that we revised in 2012 and finalized at the end of 2012.

And so what we're - I think one of the purposes of the right of way regulations is to provide more deference to tribal government choices in terms of their decisions on whether to grant a right of way across tribal lands.

And to make sure that when those decisions do come to the department for review that they're reviewed in a timely manner and deferential to traffic decisions. And so with that I'm going to turn it over to Liz Appel who is going to run through a brief power point and then we'll open it up for questions and comments.

Liz Appel: Thank you Larry, this is Liz Appel I'm the Director of the Office of Regulatory Affairs and Collaborative Action under the Assistant Secretary for Indian Affairs.

And I'm going to run through a presentation on the rights of way proposed rule that was published in June and the rule, the presentation and some

additional information are all available on the BIA Web site if you'd like to follow along.

There is a - if you go to [bia.gov](http://bia.gov) and you go to Office of Regulatory Affairs we have a link there to the rights of way rule that we'll have up. So this proposed rule comes from several years of work.

Back in 2005, 2006 timeframe the department undertook an effort to examine how it's meeting its trust responsibilities. And part of that was identifying some outdated regulations with regard to trust land management.

And the first of those outdated regulations that we tackled was the leasing regulation and in 2011 and 2012 we worked on updating the residential and business portions of the leasing regulations and we also developed a new sub part addressing wind and solar leasing on Indian land.

And we held tribal consultations on both the draft and proposed versions of those rules and ultimately issued final regulations in December 2012. And during our consultation sessions on those draft and proposed versions we heard a lot of comments that rights of way should be next on the priority list as far as land regulations.

And that updating the leasing regulations was helpful but that the complementary piece would be rights of way. So in 2013 we turned our attention to updating the rights of way regulation and we formed a workgroup of subject matter experts within the department within Bureau of Indian Affairs.

We had several representatives from the BIA realty offices throughout the country and also members of the Office of the Solicitor. And the draft revision

on the rights of way rule were circulated for comment to all the realty officers throughout BIA. So from those efforts we developed this proposed rule, which published in June.

The current rights of way regulations are over 50 years old they were first published in 1968 and have been updated a couple times but none of those updates have occurred since 1980. So that's one reason that this rule was determined to be necessary for update.

The rule since the last update that there have been a lot of technological advances and when you read the current rule it's clear that the types of rights of way that were at the forefront of people's minds back then were railroads and telegraph and things like fiber optic lines weren't being considered.

So the current rights of way regulation relies on specifics or statutory authorities specific to different types of rights of way and they impose specific requirements depending on whether the right of way was for a railroad or a telephone line.

For the proposed regulation we're attempting to simplify and streamline and part of the simplification is relying on the general statutory authority for granting rights of way for all purposes. That general authority is at 25USC323 also known as the 1948 Act.

And our legal team has determined that there's no benefit lost by removing references to those specific statutory authorities but we are open for comment on that point if anyone identifies a specific benefit that would be lost by relying on this general statutory authority instead.

The proposed rule also incorporates as Larry said many approaches that were taken and the leasing regulations examples are establishing timelines for BIA review of right of way applications, setting up the processes for BIA's review more clearly, allowing BIA disapproval of rights of way only in certain specified circumstances and deferring to tribes on the compensation amount for tribal land.

So I'm going to run through an overview of the proposed rule and each of the six sub parts but before I do that I want to point out that this is just a proposed rule and the reason we're having consultation sessions is to get input on how this proposed rule can be updated and improved. So all the specifics that I run through here are open to change depending on the input that we receive.

So starting with the first sub part, which is the general definitions and provisions we've added several definitions in an attempt to make the rule more transparent and we've added a scope section about what this part 169 applies to clarifying it's applicability to Indian land meaning land that the United States holds in trust or restricted status for tribes or individual Indians.

And also adding a section on what happens if there is a life estate on the land. There are some of the general provisions that are in the updated leasing regulations are also in the proposed rule for rights of way for example when right of way is needed whether tribes may contract or compact, what laws and taxes apply when there's a right of way.

And how BIA provides notice of rights of way and what decisions may be appealed and who may appeal them. The rule sets out more clearly how someone can go about obtaining a right of way on Indian land and one of the main changes that the proposed rule would make would be to remove the

requirement to get BIA approval to survey the land when an applicant is preparing an application for a right of way.

The applicant would still have to get the approval, the consent of the land owners to access the land but there wouldn't be the step of getting BIA approval. And the proposed rule sets out what an application may include or must include and one of the new requirements is a performance bond or alternative security, which we'll talk about later.

So a statutorily consent is required for a right of way so on tribal land the consent of the tribe is required and by statute a consent of the owners of a majority interest in individually owned land is required.

And BIA may grant the right of way without the consent of landowners in certain circumstances specifically the statute says that where the owners are so numerous that obtaining their consent would be impracticable and BIA provides a notice to all the owners then BIA may grant that right of way.

The regulation the proposed rule would define so numerous to mean 50 or more but less than 100 owners where no single owner holds an interest greater than 10% of where there are 100 or more co-owners and that threshold that the proposed rule has comes from (APRA) and the definition of highly fractionated in (APRA).

The proposed rule would require a bond or alternative security from the applicant and it sets out that the bond could be in the form of a CD and irrevocable letter of credit, treasury securities, security bonds or even an assigned savings account.

And that bond would have to cover the highest annual rent, damages from construction of any permanent improvements, O&M charges if it's on an

irrigation project and restoration and reclamation of the premises and there are certain circumstances in which BIA can waive the requirement for a bond.

For travel land BIA is going to defer to the tribes determination that a waiver is in its best interest. And for individually owned land BIA's will waive if owners of the majority of the interests request and BIA makes the determination that it's in the owner's best interest.

For the amount of compensation due for a right of way for tribal land BIA is going to defer to the tribe if the tribe submits an authorization and the tribe may waive the valuation.

For individually owned land BIA is going to require market value unless the landowners waive and is going to require valuation unless the landowners waive or unless the grantee constructs infrastructure improvements that will benefit the landowners and BIA makes the best interest determination.

The proposed rule sets out when compensation is due but deferring to when the grant specifies that it's due. It also limits when direct pay is available to circumstances where there are 10 or fewer landowners and they all agree and that that mirrors the new leasing regulations and was put in there for administrative efficiency.

The proposed rule also sets out when reviews and adjustments of the compensation will be required. For tribal land generally it's not required unless the tribe requests that it be required. Individually owned land it's not required under certain circumstances for example if the payment is just a onetime lump sum or the right of way is a short term of five years or less. The right of way grant process imposes timelines on BIA approval as the Deputy Assistant Secretary mentioned. So upon receipt of an application

package BIA first looks to ensure the package is complete, if it's incomplete they notify the applicant and identify the missing information.

If it's complete BIA will send a letter to the applicant acknowledging the date of receipt and then within 60 days of that date of receipt BIA will review and issue a decision on the right of way application.

And the 60-day clock for BIA's review starts only when that package is complete so that includes any (MEPA) documentation or valuation. If BIA misses that 60-day deadline then the parties can file a notice to compel action.

When BIA is reviewing the application for a right of way there are only limited grounds on which BIA may disapprove the application. If the required consents have not been obtained or the regulation has not been followed or there's some other compelling reason to withhold approval otherwise BIA will approve the right of way application.

And to the maximum extent possible BIA will defer to the landowners determination that the right of way is in their best interest. And BIA has the discretion where the right of way traverses several tracks, BIA may grant one right of way for all of the tracks or issue separate grants in its discussion.

The proposed rule sets out what any right of way grant will contain as far as restrictions and conditions and required that reference maps of definite location are included.

The proposed rule also attempts to address piggybacking in rights of way. So if there's a new use within an existing right of way or overlapping with an existing right of way the proposed rule would provide that the grantee must



obtain a new right of way if the original grant doesn't specify the use for the new right of way.

Or if the use is not within the same scope of use that is specified in the original grant and that same scope is really a legal determination. BIA will grant the new right of way, if the new right of way doesn't interfere with the use or purpose of the existing right of way and if the existing grantee consent.

Sub part C of the proposed rule addresses the term of a right of way; it requires that the right of way grants state the term of the right of way. And for tribal land BIA will defer to the tribes determination as to what term is appropriate.

For individually owned the term of the right of way must be reasonable depending on the use and the proposed rule sets out various uses and various terms with those uses as guidelines for what may be appropriate terms.

And more particularly interested in comments on whether these terms are appropriate for the different types. So for example we have a term of 30 years for telecommunication broadband and fiber optic lines.

The proposed rule sets out that BIA will renew an original right of way if the original right of way grant allows for renewal and specifies what the compensation will be and if there's no change in the size, type or location of the original right of way.

And the landowners must consent to that renewal unless the original right of way grant allows for renewal without consent. If there is going to be a change in the size, type, location or duration of the right of way then the grantee must apply for a new right of way.

And the proposed rule follows the format of the leasing regulations in that it also sets out the processes for obtaining BIA approval of amendments, assignments and mortgages.

So for amendments well for all of them, all of these BIA has a time limit imposed on them so that they must approve requests for amendment, assignment or mortgage within 30 days of receiving the complete application package. And again BIA will send a letter notifying the applicant when the package is complete so that everyone knows when the start date is.

The process for amendment the proposed rule sets out when approval for an amendment is required and basically an amendment BIA approval is required for any change to a right of way provision or to accommodate a change in location of permanent improvement to any unimproved land within the right of way corridor.

But if the amendment is just to correct a legal description or address another technical correction then BIA approval is not required. Landowner consent is required for amendments and there are limited grounds on which BIA may disapprove.

For assignments BIA approval is required unless the original right of way allows for assignments without approval and the parties provide BIA with a copy of the assignment so BIA knows who the grantee is at any point.

Landowner consent is also required for assignments and again there are only limited grounds on which BIA may disapprove. If a right of way is being mortgaged BIA approval is required and landowner consent is required but again there are limited grounds on which BIA may disapprove.

Sub part D of the proposed rule addresses the effectiveness of right of way documents and establishes that right of way documents are effective upon BIA's approval even if an administrative appeal is filed.

BIA will record right of way documents in the land title and records office immediately following its approval and if no BIA approval is required for example where there is an amendment for a technical correction the grantee still must provide BIA with a copy for recording.

And the tribe must record grants on tribal land for a tribal utility that's not a separate legal entity and grants on tribal land that are also authorized under special acts of congress without BIA approval so that the land title and records office has the most updated records on what is present on the property.

So part E addresses compliance and enforcement of rights of way and this also mirrors the updated leasing regulations in that BIA may investigate compliance and enter the property at any reasonable time upon reasonable notice and consistent with any notice requirements that the right of way document has on top of reasonableness.

And BIA will also promptly investigate if the landowner notifies BIA of a specific violation with regard to right of way. A right of way grant may establish - well the landowner consent for a right of way grant may establish negotiated remedies.

And if that - those negotiated remedies provide one or both parties with the power to terminate the right of way that termination is effective without BIA approval for tribal land but for individually owned land BIA approval is required. And those

negotiated remedies may apply in addition to or instead of remedies available to BIA as specified in the grant.

The right of way may also provide that the tribe will address violations and specify how disputes will be resolved if for example they are resolved in tribal court and BIA will defer to any ongoing actions or proceedings.

The proposed rule sets out what the process is if there is a violation of the right of way basically it follows the notification process allowing 10 days for (curing) or disputing that a violation occurred or requesting additional time.

A similar process is set out for a violation based on failure to pay compensation and if the grantee does not (cure) a violation or provide adequate proof of payment by the deadline then BIA will consult with the tribe if it's tribal land.

Or if it's individually owned land where feasible BIA will consult with the individual landowner to determine what remedy should be made available or if they should provide the grantee with additional time to (cure).

And following consultation then BIA may take action to immediately cancel or invoke other remedies. If it decides to cancel then it will follow a process where it sends a cancellation letter within five business days and will send a copy to the tribe and provide actual or constructive notice to individual landowners.

The proposed rules sets out what the cancellation letter will include and when it will be effective. And the proposed rule also sets out cancellation for abandonment or non-use of a right of way and allows for cancellation 30 days after mailing notice to a grantee where the grantee has not used the right of

way for the purpose for which it was granted for a consecutive two-year period or where the grantee affirmatively relinquished the right of way.

And finally the last sub part of the proposed rule addresses service line agreements and defines service lines as a utility line running from a main line that's used to supply the owners or occupants of the land with telephone, water or other utility service.

The current definition includes a capacity limitation but the proposed rule would remove that capacity limitation. And while no BIA approval is required for the service line no right of way grant is required but the proposed rule sets out that the agreement should address mitigation of any damages during construction of the service lines.

And restoration of the premises at termination of the agreement and there's no valuation required but the service line agreement must be filed with BIA within 30 days of signing and BIA will then record that in the LTRO so that BIA is aware of the service lines existence on the land.

And so comments are due on the proposed rule on August 18 - well actually that will be extended but we don't know yet - that will be announced in the next day or two exactly when the deadline is.

Email is the preferred method to submit comments at [consultation@bia.gov](mailto:consultation@bia.gov). And as far as next steps we'll be reconvening a workgroup to review all the comments that we received during this consultation session and the other consultation sessions that we've had.

This session is being recorded as the others were recorded and we'll also be reviewing all of the written comments we receive and we'll be making

changes to the proposed rule in response to those comments and ultimately will publish a final rule in the federal register and that final will not become effective for at least 30 days after publication.

So thank you everyone for bearing with me through that presentation. I'll turn it back to our Deputy Assistant Secretary Larry Roberts.

Larry Roberts: Okay thank you Liz and I should also note that we have a couple of people here attending in the room as well is our BIA Director Mike Black and Jennifer Turner from our Solicitor's Office.

And so I think with that we're ready to move forward with comments and questions from participants.

Coordinator: If you would like to ask a question please press Star 1 on your phone at this time. And when prompted record your first and last name. Again that's Star 1 to ask a question and please record your name when prompted.

One moment please, one moment our first question is from (Thomas Birdbear) your line is open.

(Thomas Birdbear): Yes hello can you hear me?

Larry Roberts: Yes we can.

(Thomas Birdbear): I'm looking at section number 169.008 what laws apply to rights of way approved under this part. And under section, sub-section B it references tribal laws generally apply to lands under the jurisdiction of the tribe et cetera. What my question relates to is how the proposed regulation is going to ensure the protection of the Indian trust responsibility in relation to when the tribe

takes it over without having some type of Fifth Amendment protection for the right of way interest held by the allotted land (interest)?

Larry Roberts: Okay this is Larry Roberts and I'm going to give the - the question is one about whether there's any - whether the regulation concerns any Fifth Amendment takings and I think the short answer is is that we don't believe that the proposed rule as put out there would violate anybody's rights under the Fifth Amendment.

But if that's a concern I think we need to - it's helpful during our comment period for you to provide more detail about that concern so that our Solicitor's Office can take a little bit back to make sure that the regulation does not violate the Fifth Amendment.

(Thomas Birdbear): That's exactly what's needed and a followup question is what input has the Solicitor's Office had up to this point on these regulations and why haven't they addressed two major U.S. Supreme Court decisions that support this very idea because if a tribe were to deny a right of way for whatever reason that's creating a conflict of interest between two beneficiaries.

And it seems to me while under the proposed regulation the proposed regulation gives one beneficiary the tribe's complete control over this process.

Larry Roberts: Okay well with regard to your first question about the role of Solicitor's Office we've had a team of folks working on this proposal including folks from the Solicitor's Office.

And that's consistent with how we work on any proposed rules that I'm aware of where we'll have a team of folks from BIA, the Assistant Secretary's Office,

the Solicitor's Office and I believe subject matter experts to work on our regulations.

So I think in terms of helping us understand what your concerns are in terms of specific Fifth Amendment issues here and also it would be helpful to know the two cases that you're referencing so that we can take a close look at those during this comment period.

(Thomas Birdbear): They're the two most recent Supreme Court cases from the United States Court that uphold a lot of land interests. And I'm surprised that the government has availed itself to know more about these cases because they directly bear upon these regulations that are being proposed.

Specifically 169.008 sub section B, sub section 1 or excuse me sub section 2 goes over the applicable tribal law, the governing tribal law that is not inconsistent with federal law.

However these - it says however these regulations may be superseded or modified by tribal laws, by tribal laws as long as the tribe is notified of a superseding or modifying effect of the tribal laws.

And the superseding or modifying of the regulation would not violate a federal statute or judicial decisions or conflict with our general trust responsibility under federal law.

My official comment is I oppose this regulation because the regulation itself is a violation of the federal trust responsibility already because it's going to subject us allotted landowners to an additional layer of bureaucracy, which is tribal government that lacks any Fifth Amendment protections for the Indian land rights.



In (Hodel) versus (Irving) the Supreme Court outlined the effect of a federal statute Indian land consolidation act that basically minimized the value of allotted land interests.

And the Supreme Court said it doesn't matter the amount of land that you're talking about it matters...

Larry Roberts: Go ahead.

(Thomas Birdbear): ...only that the land is held in trust.

Larry Roberts: So one of the things that I wanted to point out is I know you've pointed out 169.008 B2 but B3 says that the superseding or modifying of the regulation would apply only to travel land not to individual allotted lands.

(Thomas Birdbear): Okay that now is a second question I have as well because in the definitions there is no definition of allotted land. You have a definition for Indian land, which includes tribal and allotted, you have a definition for another classification of land but not individual allotted land.

Larry Roberts: Okay.

(Thomas Birdbear): And so that leaves the question for me which is which lands does the regulation reference because it seems to be referencing both.

Steven Simpson: This is Steven Simpson from the Solicitor's Office. There is a definition of individually owned Indian land, which is combined with tribal land is defined as Indian land under the regulation. So we do define it individually owned individual land.

(Thomas Birdbear): Those ownership interests are held separately by conflicting - by landowners that sometimes have conflicting economic objectives. I don't see how the department can avoid that and that's in fact ignoring a certain land classification by bundling it into the tribal lands.

Allotted land is not tribal land I think we need to agree on that first and not say that it includes the individual land is included.

Jennifer Turner: This is Jennifer Turner from the Solicitor's Office and a couple of things in response to your comment. You know, it sounds like your suggesting that we consider creating separate rules for allotted land then for tribal land.

And we'll certainly take that under consideration as we move forward with our consideration of comments under this rule. The...

(Thomas Birdbear): I'm not saying that at all I'm saying that for this process that the government needed to avail itself of more research so that they know the differences and the importance of not including those definitions because the bottom line is this regulation violates the Fifth Amendment already because we're seeing this on Fort Berthold with the (Bakken) resources.

And how the tribe and the bureau are making water permitting decisions that exclude allotted land interests and that's not being addressed. So we have to find legal counsel just to hold onto what is ours.

So this is more than just merely we should separate these things this should not hold water or allotted land interest on Fort Berthold.

Steven Simpson: This is Steven Simpson again if you'll submit that in your comments on the rule then we will be happy to take a look at it thank you.

(Thomas Birdbear): Do you care to address it now while I'm on the line?

Steven Simpson: Not without doing the research that you're asking us to do.

(Thomas Birdbear): Well in fact if the research hasn't been done I think this hearing is probably premature.

Larry Roberts: So with regard to our consultations and not only this rule but all other rules when we put out a proposed rule the process is to hear those comments and to make sure that we have those.

And so we have your comments in terms of everything here will be transcribed and then our obligation after the comment period is closed is for the team again to review all of those comments and then address them in a preamble to the final rule.

And so that's sort of our course and that's the course that we'll take for the purposes of this conference today.

(Thomas Birdbear): So if you receive an actual notice of a violation a (unintelligible) violation to trust duty in the course of these discussions, what do we do with that one?

Larry Roberts: So everything is being transcribed so we'll look at it as a team and...

(Thomas Birdbear): I'm asking that as a beneficiary to the trust.

Larry Roberts: So...

(Thomas Birdbear): What will the trustee do with this information.

Larry Roberts: We're going to take a look at it and do as the Solicitor's Office said do our research on it and then proceed accordingly based on what we believe the law and our trust responsibilities to be.

(Thomas Birdbear): Okay, I have one more comment.

Larry Roberts: Okay.

(Thomas Birdbear): The proposed regulation is in violation of the trust duty to deal impartially with beneficiaries of a trust by granting tribal and industry input while minimizing allotted land input.

A separate hearing location is needed for Fort Berthold Reservation because of the presence of the (Bakken) trust resources and the need to include the owners of a majority of land on Fort Berthold, which is the allotted land owners in any proposed regulation change.

I suggest that Fort Bertholds Reservation in fact be exempted from any further discussions of this until that's done because it removes federal protections and the trust responsibility.

Larry Roberts: So thank you for your comment we're going to take our next comment now and I guess what I would ask folks to do is I don't know how many people still want to make comments we have set aside quite a bit of time on this consultation.

And so in fairness to everyone who is waiting to ask comments please try to keep your comments to five minutes and then at some point during this

conference call I'm sure there will be a second round and so I'm sure we'll get to your comments.

But we ask in the interest of time to let everybody have at least one chance to make comments that - limited to five minutes. And so with that Operator we'll go to the next participant that wants to make a comment or a question.

Coordinator: All right our next question is from (William Watt), your line is open you may ask your question.

(Bill Watt): Hi thank you this is (Bill Watt) with the Crow Tribe and I'm here with (Woodrow Plainfeather) from our land management department. I had just two or three questions which I think I can keep short if you're able to hear me.

Larry Roberts: We can hear you.

(Bill Watt): First of all on 169009 and I know this is similar to the leasing regulations, you know, the regulation of, you know, (purports to bar) any state taxation of any kind of improvements or the right away itself and also provides that improvements may be subject to taxation by the tribe.

How do you see that working say on the effective date of the regulation in light of some, you know, past judicial decisions that at least hold that the tribe cannot tax rights - within rights of way granted under the general right of way statute?

Any general idea of how that would work or will this just provide the tribe with a further ammunition I guess in any litigation?

Larry Roberts: Okay so I'm going to turn that over to either Jennifer or Steven from Solicitor's Office for response in terms of potential ramifications.

Jennifer Turner: Sure, this is Jennifer Turner from the Solicitor's Office and that regulation is identical to the provision in our leasing reg, which says the same thing as you noted.

And the reference in sections A, B and C in the beginning subject only to applicable federal law that you have taken the position in litigation that that includes federal (pace) law including the Supreme Court (Bracker) analysis and other similar cases.

So in terms of how this will affect situation going forward we're not trying to rewrite Supreme Court precedence but we are trying to emphasize the importance of tribal taxation and we are trying, you know, and if you look at the preamble for the leasing reg we kind of articulate the reasoning behind this.

But yes we are generally trying to support tribal taxation and to try to push back against state and local taxation while at the same time recognizing that we are subject to applicable law including federal case law.

(Bill Watt): Thanks I think that does it and I think this, you know, in both the leasing regs and here that is very helpful. If I may just two to three other specific things if there's time.

In 169201 you provide guidelines for the terms and it all - further on it provides, you know, the agreement can agree to an automatic renewal or an option to renew on the part of the applicant.

Do those suggested guideline terms include the period of any renewals that are described in the consent agreement or can you just provide for kind of an indefinite number of renewals of that initial term and or maybe that needs to be clarified.

Larry Roberts: I think that that's a great point for us to look at clarifying in the proposed rule and so what I would say is I know that you made the comment for the record if you want to suggest to the department how that can be further clarified in writing we'd, you know, be happy to look at that and something we'll look to clarify in the final rule.

(Bill Watt): Great thanks and finally I guess trying to keep it short in 169.123 as was mentioned by Liz on piggybacking. I think as I understand it I believe there's BIA decision law on some older rights of way statutes that authorized state highways, you know, rights of way for state highways.

And the interpretation is that you could add say a fiber optic line to that right of way without obtaining new consent if it's under one of those older statutes and I apologize I don't have a good citation here.

It would appear that these regulations would change that interpretation and require for any change in the scope of the easement or the use would require a new right of way a new consent is that correct or the intent?

Jennifer Turner: Sure, this is Jennifer Turner again in the Solicitor's Office and, you know, while we were working on these right of way regulations we've had a lot of questions come up from the BIA realty officers in the field about how to handle piggybacking because the old regulations did not squarely address it.

And so this new provision was intended to provide guidance for going forward on how to handle piggybacking. And so yes it does change the law because it is going to, you know, depending on what happens during the remainder of consultation and how we revise the rule it is establishing the rules for piggybacking.

That said in terms of the effectiveness of the regulation there is another provision in the reg that clarifies that for - if there is the terms of an existing right of way that was granted before the rule takes effect those terms of that right of way govern and not the new regulation.

So I guess it is for going forward we do have Indian piggybacking provisions but if there is already existing guidance in the or existing rules on it in the grant - right of way grant then those apply.

But if you have suggestions or concerns about changing the piggybacking provisions here and for example if you think they're too narrow we would - we're certainly open to comment.

(Bill Watt): Thank you very much that's all I have for now.

Larry Roberts: Okay Operator can you give us the next caller.

Coordinator: As a reminder if you would like to ask a question please press Star 1 on your phone and please record your name when prompted. One moment please, all right there are no other questions queuing at this time. One moment I'm sorry bear with me one more moment I'm sorry.

We have a question from (Teresa Braxton) your line is open.



(Teresa Braxton): Hi can you guys hear me?

Larry Roberts: Yes we can.

(Teresa Braxton): I have looked on the Web site for the presentation on the proposal the PDF and I've turned on a different computers and I cannot get that to open at all it says that it's an empty file.

Can you guys get that fixed with your IS department so we can look at it?

Liz Appel: Yes I apologize about that we'll get that fixed right away.

(Teresa Braxton): All right thank you.

Coordinator: There are no other questions at this time.

Larry Roberts: Okay well we'd be happy to give people a few more minutes if they want to think about their question possibly. Other than that Liz or Steven or Jennifer if there's any additional comments you'd like to add.

I guess maybe Liz if you could kind of go for the process from here on out or.

Liz Appel: Sure as I said at the end of the presentation we'll be reviewing all the transcripts from the consultation sessions and public meetings and all the written comments that we received.

And our subject matter experts within BIA and the Office of the Solicitor will be reviewing those along with representatives from the Assistant Secretary's Office and we will make changes to the proposed rule in response to those comments and also we will have a summary of the comments that we received

as well as responses as to how each of the suggestions and questions were addressed in the final rule.

We don't yet have a timeframe for when we anticipate the final rule will be published because it depends a lot on the extent and complexity of the comments that we received during this public comment period.

But once we do publish a final rule it will - there will be a delay in the effective date of at least 30 days so that we have time for everyone to get up to speed on how to implement the final rule.

Larry Roberts: Great thank you Liz, Operator have we gotten any more questions?

Coordinator: There are no more questions at this time.

Larry Roberts: Okay well with that folks I think we'll go ahead and close down the call but I do appreciate everybody that was able to join us to hear us out a little bit and we most appreciate - definitely appreciate all the comments and we do hope that anyone that has additional comments and would like to reiterate those please submit them through the channels as Liz described.

Otherwise thank you all very much.

Coordinator: Thank you this concludes today's conference. Participants you may disconnect at this time.

END